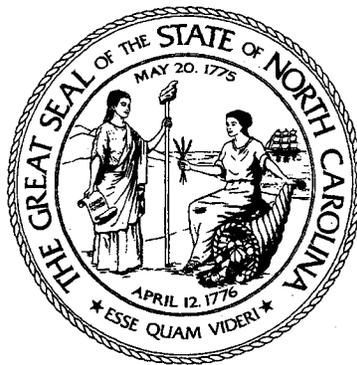


**JOINT SELECT COMMITTEE
ON ELECTRONIC VOTING SYSTEMS**



*Interim Report to the
2005 General Assembly
of North Carolina*

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STATE OF NORTH CAROLINA

JOINT SELECT COMMITTEE ON ELECTRONIC VOTING SYSTEMS



February 9, 2005

TO THE MEMBERS OF THE 2005 GENERAL ASSEMBLY:

Attached for your consideration is the interim report to the 2005 General Assembly. This report was prepared by the Joint Select Committee on Electronic Voting Systems pursuant to G.S. 120-70.81.

Respectfully submitted,

Handwritten signature of Senator Austin Allran in cursive script.

Senator Austin Allran
Cochair

Handwritten signature of Representative Verla Insko in cursive script.

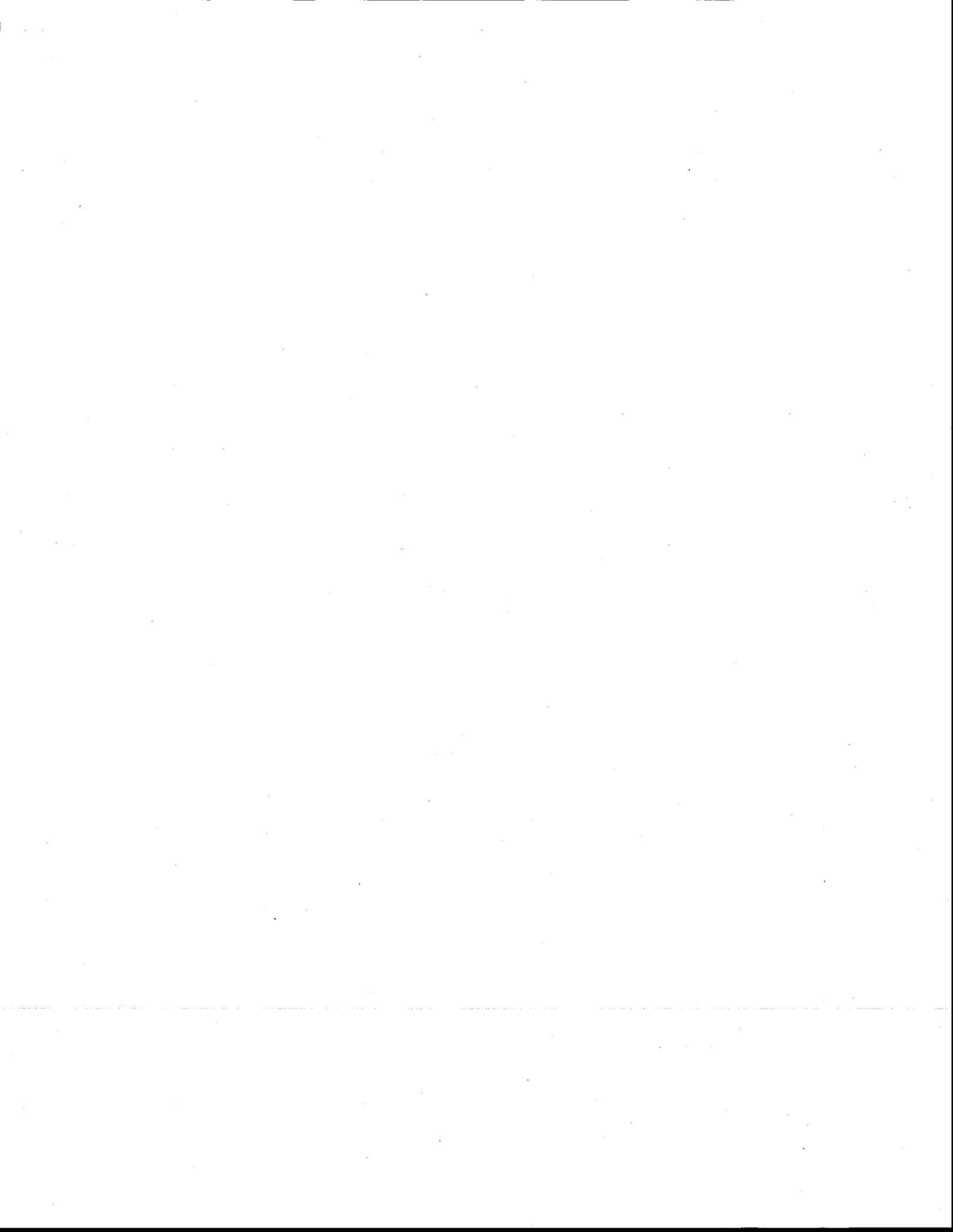
Representative Verla Insko
Cochair

Handwritten signature of Senator Ellie Kinnaird in cursive script.

Senator Ellie Kinnaird
Cochair

Handwritten signature of Ms Susan T. Adams in cursive script.

Ms Susan T. Adams
Cochair



JOINT LEGISLATIVE EDUCATION OVERSIGHT COMMITTEE
2003-2005

COMMITTEE MEMBERSHIP

Senate Appointees

Senator Austin Allran, Cochair
Hickory, NC

Senator Ellie Kinnaird, Cochair
Carrboro, NC

Mr. David Allen
Computer Systems Engineer and Publisher.
High Point, NC

Mr. Michael Ashe
Election Director of Durham County
Durham, NC

Honorable Barry Jacobs
Orange County Commissioner
Hillsborough, NC

Mr. Warren Murphy
Co-Chair of Common Cause
Raleigh, NC

House Appointees

Representative Verla Insko, Cochair
Chapel Hill, NC

Ms. Susan T. Adams, Cochair
Secretary, Moore County Board of Elections
Pinehurst, NC

Representative Jean Rouse Preston
Emerald Isle, NC

Mr. Robert B. Cordle
Member, State Board of Elections
Charlotte, NC

Mr. John Esparza
Computer Security Specialist
Cary, NC

Mr. Roger W. Knight
Attorney
Raleigh, NC

Joint House-Senate Appointee

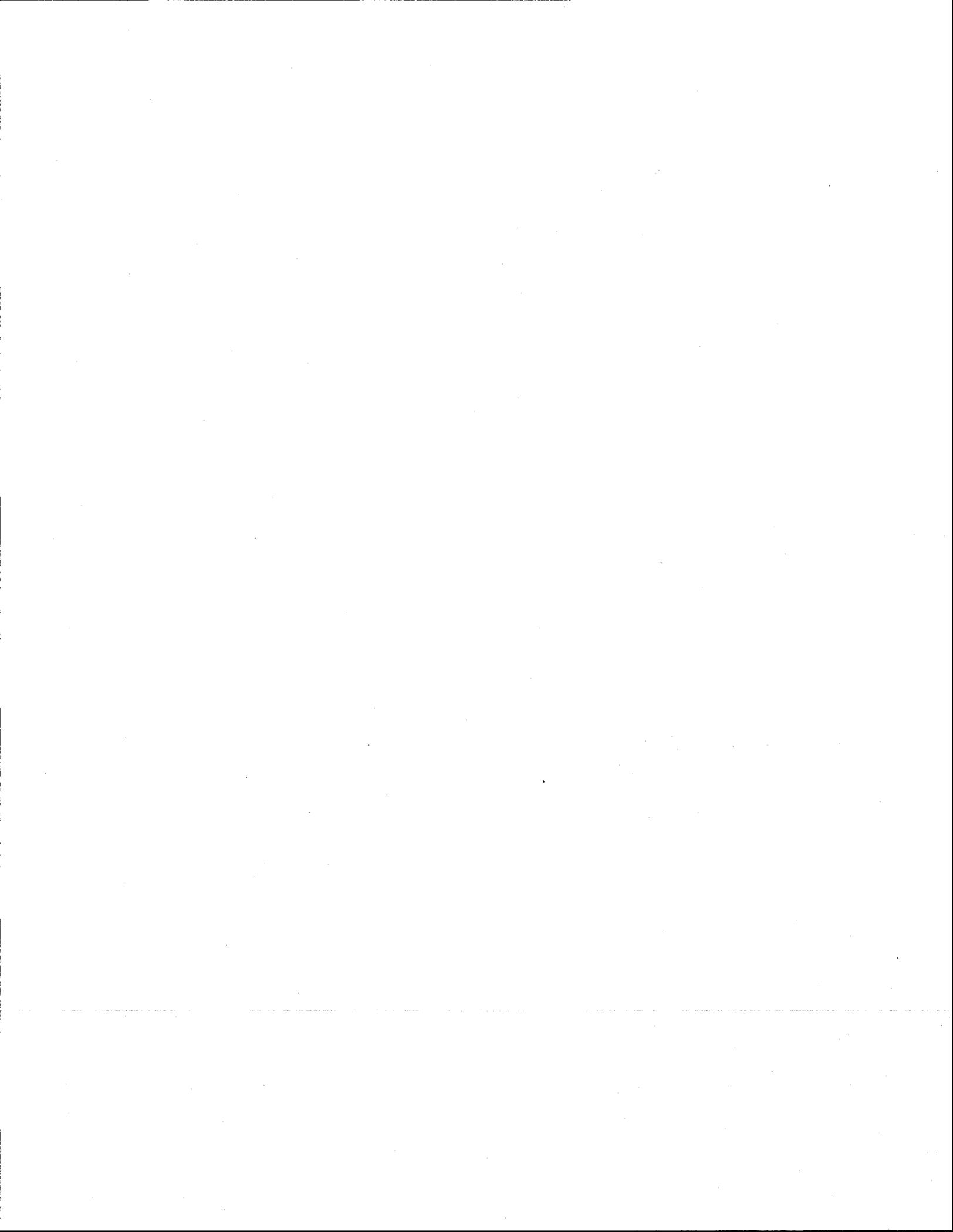
Mr. Gary O. Bartlett
Executive Director, State Board of Elections

COMMITTEE STAFF

Bill Gilkeson Gerry Cohen Erika Churchill Brenda Carter Marilyn Chism Peter Capriglione

Pam Evans, Committee Assistant

Angie Whitener, Committee Assistant



COMMITTEE FINDINGS AND RECOMMENDATIONS

I. Restoring Public Confidence in the Election System

The Committee finds that, despite capable, dedicated election officials, the election system has malfunctioned just often enough and recently enough to create doubt in the public mind that the system is healthy. Those malfunctions, together with questions raised by critics of electronic voting about what problems are possible, threaten to leave the State with an election system that does not have the public's confidence.

The Committee heard presentations from county election officials describing the problems that occurred in the 2004 election. The election board chair of Carteret County, where 4,438 votes were lost on an electronic voting system, said the nearest computer support person for his system was 3,000 miles away. The Committee also heard testimony from computer specialists who asserted that computer-based voting systems are subject to errors and manipulation on a magnitude beyond anything possible with paper ballots. (The Committee was reminded that paper ballots have their own long history of manipulation.) The Committee was told that since computer source code is proprietary, no one but the vendor can know how the system operates. The State Election Director, Gary Bartlett, recommended that the acquisition and support of voting systems move toward greater centralization.

As a result of its meetings, the Committee makes the following findings and recommendations to the 2005 General Assembly:

- **Paper Ballots**

The Committee finds that the critics of pure direct record electronic voting system -- "black box voting", as they call it -- have raised enough legitimate questions and found resonance with a large enough share of the public, that a requirement that all voting systems be reducible to paper is a necessity.

The Committee recommends that any voting system must generate a paper form of the ballot. The voter would always be given an opportunity to review and verify the paper ballot before casting it. Though with optical scan and direct record electronic (DRE) voting systems, the electronic or mechanical means would be the primary means of counting, a hand-to-eye sample count of the paper would be required in every county as a way of post-testing the accuracy of the count. If a discrepancy appeared that was significant in a race, a full hand-to-eye count of all the ballots in that race would be conducted. The right to a hand-to-eye recount would also be expanded, giving a candidate entitled to a recount under current law the right to demand a sample hand-to-eye recount (if the first recount was not hand-to-eye) in 3% of the precincts in each county. If that sampling indicated a potential reversal of results, there would be a hand-to-eye recount in the entire jurisdiction in which the election was held. (*See Proposal 1.*)

- **Need for Uniformity, Quality Control, and Accountability in Voting System Acquisition and Support.**

The Committee finds that the current county-based purchasing model has resulted in an array of voting systems across the State, some good, some outdated, some unreliable, some lacking in needed support for operation. The power that the State Board of Elections has been given to approve types of equipment counties may purchase and, more recently, to decertify types already in use, is helpful in creating a uniform system, but it is not enough.

The Committee recommends that the State Board of Elections, with the assistance of the Office of Information Technology, be given authority to negotiate with vendors. The State Board, rather than the counties, would write the "request for proposal" for all voting systems of a certain type. The counties would still do the purchasing, but their choices would be limited to certain types of contracts negotiated by the State Board. The State Board would assure uniformity of cost and features within the type. All vendors doing business in North Carolina would be required to escrow their source code and submit it for review by the State Board and representatives of all the State's legally recognized political parties. Every vendor would be required to post a bond to cover damages from defects in the voting system. Every vendor would be required to have an operating office in North Carolina, to notify the State Board of updates in its system, and to report defects it is aware of that have occurred in its system anywhere. Felony penalties would apply to willful and fraudulent violations of the duties, and civil penalties would apply to any violation. **(See Proposal 1.)**

- **Need for Ensuring Able Election Officials**

The Committee finds that, despite the dedication and ability of most election officials, nonetheless some of the problems appear to be the result of staffing weaknesses. Particularly at the precinct level, election boards have increasing difficulty in recruiting officials able to handle the complexities and ardors of staffing the precinct. Efforts should be made to provide incentives for more capable people to serve as election officials.

The Committee recommends that all public employees in North Carolina – State and local – be given 24 hours of "community service leave" to serve as precinct officials or in early voting sites. **(See Proposal 2.)**

- **Need for Relief for Election Officials by Streamlining the Counting Process**

The Committee finds that county boards of elections have spent long, grueling election nights opening and counting mail absentee ballots because they were not permitted to begin the process of opening envelopes and beginning to count them before 2 p.m. on election day. The requirement has the legitimate purpose of preventing the disclosure of election results while people are still voting. However, a way to relieve the time pressure on election officials appears to exist that does not jeopardize the secrecy of the results.

The Committee recommends that counties using optical scanners to count mail absentee ballots (apparently most counties) may open the envelopes and enter the ballots into a tabulator at the pre-election meetings at which they approve the absentee ballot

applications. They may enter the ballots into the tabulator, but may not print a totals readout until election day, since doing so would reveal the results. **(See Proposal 3)**

- **Need for Experiment in Convenient and More Reliable Voting**

The Committee finds that the system of early voting, in which almost a third of North Carolina's voters participated in 2004, has the possibility of solving a number of problems. Early voting sites can be outfitted with online access to all the voter registration data in the State, and they can be equipped with all the ballots with which anyone in the county can vote. Early voting sites can be staffed with the best available election officials. Because anyone in a county may vote at any site, voters may vote at a site convenient to their place of work as well as one close to their home. Voters who have moved and are uncertain of the right precinct polling place can vote at an early voting site while updating their records. The success of early voting suggests that it might be used on election day.

The Committee recommends that the State Board of Elections conduct, during 2005 and 2006, a pilot program in 10 diverse counties allowing the process of early voting to continue through election day. Larimer County, Colorado, where this practice has been tried, calls the sites used in this practice "voting centers." The number of traditional polling places open on election day would be reduced or eliminated. As part of the pilot, the State Board would determine which early votes or voting center ballots need, for irregularity-prevention purposes, to be tagged with the voter's identity. Current law requires this tagging in early voting. The State Board should report on its pilot to the 2007 General Assembly. **(See Proposal 4)**

- **Need for Dealing with the Consequences of Voting System Problems**

The Committee finds that the State Board of Elections needs the tools to remedy the consequences of voting system failures when election results are close. The number of lost votes in Carteret County exceeded the apparent victory margin in a 2004 statewide race. The State Board of Elections felt that it did not have the tools to remedy the situation. A majority of the board interpreted the "new election" statute to mean that allowing the 4,438 whose votes were lost to recast those votes would be a "new election." That statute said a new election must be conducted in the entire jurisdiction of the original election. And the State Board could not muster the required four out of five votes required to call a new election.

The Committee recommends (upon the recommendation of State Election Director Gary Bartlett) that the State Board may authorize a county board to allow a known group of voters whose votes were lost irretrievably to recast those votes. It would not be deemed a "new election" and would not require another jurisdiction-wide vote. **(See Proposal 5.)**

- **Need for Ethics Code for Election Boards and Staff.**

The Committee finds that, whatever the reality, the appearance exists in some eyes of election boards and their staff having contacts with vendors that raise questions about

their objectivity. As the voting equipment trade becomes more high-pressure, as the debate about voting equipment becomes more heated, and as the State Board assumes a new role in the purchasing process, it may be healthy to take a fresh look at traditionally accepted practices.

The Committee recommends that the State Board of Elections recommend a model code of ethics for election board members and their staff that addresses appropriate relations with vendors that do business or seek to do business with boards of elections in North Carolina. The code should address how to avoid both the reality and appearance of conflict of interest and impropriety. State Board would report the recommended code to the Committee. ***(See Proposal 1.)***

II. Need for Providing State Help to Promote Uniformity and Avoid Inequities and Unfunded Mandates.

The Committee finds that its recommendations above will inevitable cause some counties to spend money to upgrade voting systems to comply with new requirements. Some counties have a greater ability to meet the cost than others. The difference in ability to pay may parallel other differences, resulting in more kinds of discrimination than one. The interests of uniformity and equity, in addition to the plain fairness of avoiding unfunded mandates, require the State to provide reimbursement.

The Committee recommends that the General Assembly appropriate money which, together with money available under the Help America Vote Act, will fully reimburse the counties for the voting system costs they incur by complying with this Committee's recommendations. The reimbursement would be for the lesser of the cost of upgrading an existing DRE system, a new DRE system, or a new optical scan system. There would also be an appropriate to reimburse counties for sample counts and newly required recounts. ***(See Proposal 1.)***

COMMITTEE PROCEEDINGS

The Joint Legislative Education Oversight Committee held seven meetings.

Agenda

10 a.m. Monday, December 13, 2004
Room 643, Legislative Office Building, Raleigh NC

Call to Order:

Rep. Verla Insko

Introductory Remarks by Co-Chairs:

Sen. Ellie Kinnaird Rep. Verla Insko Sen. Austin Allran Ms. Susan Adams

Statements by Committee Members of Their Goals and Expectations

Background on Federal and State Law concerning Voting Equipment:

Committee Staff

Review of Current Array of Voting Systems in North Carolina, Problems That Have Occurred, and Potential Solutions:

Mr. Gary O. Bartlett, Executive Director of State Board of Elections, with assistance from State and county election boards members and staff.

Explanatory Presentation Concerning Electronic Voting Technology:

Mr. Justin Moore, Duke University Department of Computer Science

Adjournment

Committee Website: http://www.ncleg.net/committees/jointselectcomm_/

Agenda

10 a.m. Monday, December 20, 2004
Before Lunch in Room 643, Legislative Office Building, Raleigh NC
After Lunch in Room 1228, State Legislative Building, Raleigh NC

Call to Order – Room 643, Legislative Office Building:

Sen. Ellie Kinnaird

Approval of Minutes

Presentation on Voter-Verified Electronic Voting:

[CANCELLED BECAUSE OF WEATHER/TRAVEL PROBLEMS]

Dr. Rebecca Mercuri, Radcliff Institute Fellow, Harvard University

Continuation of Reports from NC Counties on 2004 Voting Problems:

Mr. Gary O. Bartlett, Executive Director of State Board of Elections, with assistance from State and county election boards members and staff.

Statements by Groups Interested in the Issue of Voting Systems:

- Ms. Allison Bowen, Interim Director, Governor's Advocacy Council for Persons With Disabilities
- Representative of visually impaired community
- Ms. Mary Klensz, Co-President NC League of Women Voters
- Ms. Mary Perry, State Vice President, NAACP [unable to attend]
- Ms. Marisol Jimenez-McGee, El Pueblo, Inc.
- Mr. Paul Meyer, Associate General Counsel, Association of County Commissioners
- Mr. John Gilbert, Legislative Chair, NC Election Boards Association
- Mr. George Gilbert, representing NC Election Directors Association

-- Break for Lunch --

Demonstration of Voting Equipment – Room 1228 of Legislative Bldg:

Mr. Gary O. Bartlett, Executive Director of State Board of Elections

Adjournment

Committee Website: http://www.ncleg.net/committees/jointselectcomm_/

Agenda

**10 a.m. Friday, January 7, 2005
Room 643, Legislative Office Building, Raleigh NC**

Call to Order:

Sen. Austin Allran

Approval of Minutes

Presentation on Auditability and Standards for Electronic Voting and Tabulation Equipment:

Dr. Rebecca Mercuri, Fellow, Radcliffe Institute for Advanced Study, Harvard University

National Overview of the Voting Systems Business and Government Response to Voting System Issues:

Mr. Doug Chapin, Director of electionline.org

Presentation on Security of Electronic Voting Systems:

Mr. Chuck Herrin, Information Technology Auditor and Professional Hacker

-- Break for Lunch --

Proposals for Better Voting Systems in North Carolina:

Mr. Gary O. Bartlett, Executive Director of State Board of Elections

Committee Discussion

Adjournment

Committee Website: http://www.ncleg.net/committees/jointselectcomm_/

Agenda

**10 a.m. Friday, January 14, 2005
Room 414, Legislative Office Building, Raleigh NC**

Call to Order:

Ms. Susan T. Adams, Co-Chair

Approval of Minutes

Committee Discussion of Possible Recommendations to the 2005 General Assembly

Adjournment

Committee Website: http://www.ncleg.net/committees/jointselectcomm_/

Agenda

**10 a.m. Friday, January 21, 2005
Room 544, Legislative Office Building, Raleigh NC**

Call to Order:

- Rep. Verla Insko, Co-Chair

Approval of Minutes

Presentations about Electronic Voting and Related Matters:

- Mr. David Hood, Member of Catawba County Board of Elections
- Mr. Glenn Newkirk, President of InfoSENTRY Services Inc. and former Information System Director of NC General Assembly

CoChairs' Proposed Recommendations to 2005 General Assembly:

- **Proposal 1 – Public Confidence in Elections**
- **Proposal 2 – Public Employee Pollworkers**
- **Proposal 3 – Early Prep for Absentee Count**
- **Proposal 4 – Any-Precinct Voting Pilot**
- **Proposal 5 – Out-of-Precinct Provisionals**
- **Proposal 6 – Recasting Lost Votes**
- **Proposal 7 – County Elections Employees/State Employees**

Adjournment

Committee Website: http://www.ncleg.net/committees/jointselectcomm_/

Joint Select Committee on Electronic Voting Systems

Agenda

**10 a.m. Tuesday, January 25, 2005
Room 414, Legislative Office Building, Raleigh NC**

Call to Order:

- Sen. Ellie Kinnaird, Co-Chair

Proposed Interim Report to 2005 General Assembly:

Adjournment

Committee Website: http://www.ncleg.net/committees/jointselectcomm_/

Joint Select Committee on Electronic Voting Systems

Agenda

Final Meeting During Legislative Session

**9:30 a.m. Wednesday, February 9, 2005
Room 1228, State Legislative Building, Raleigh NC**

- 9:30 **Call to Order:**
- Sen. Austin Allran, Co-Chair
- 9:40 --10:10 **Presentation by Dr. Ted Selker, Associate Professor, Massachusetts Institute of Technology, and Co-Director of CalTech/MIT Voting Technology Project.**
- 10:10 – 10:30 **Questions of Dr. Selker**
- 10:30 – 11:00 **Amendments to Main Bill (3 potential amendments known)**
- 11:00 – 11:15 **Discussion and Vote on Main Bill and Interim Report**
- 11:15 **Adjournment**

Committee Website: http://www.ncleg.net/committees/jointselectcomm_/

Summaries of Proposed Bills

Proposal One – Public Confidence in Elections. Proposal One makes several changes designed to restore public confidence in the election process.

Section 1 – Permitted Voting Systems, Paper Ballots, and Counting. Lists the three voting systems used in NC: paper ballots counted by hand, Optical scan, and direct record electronic (DRE). Requires by 1-1-06 that every voting system must generate a ballot. Directs that, with optical scan and DRE systems, subject to sample hand counts and mandatory hand recounts, the boards of elections shall rely on an electronic or mechanical count. If there is a discrepancy between an electronic or mechanical counts and hand-to-eye paper counts, the hand-to-eye prevails unless it is reasonable to conclude it is not the true count.

Section 2 -- Requirements for Voting System Vendors. Effective with any upgrade or new voting system purchased beginning 7-1-05, vendors of voting systems in NC must:

- Escrow their relevant source code and make it available for review by the State Board of Elections, the NC Office of Information Technology, and the Chair (or designee) of any legally recognized political party in NC.
- Keep the escrowed source code up to date, and must swear that it is the code used in operating voting systems.
- Maintain an active office in NC.
- Notify the State Board of any known defect in a voting system used in NC, even if the defect shows up outside the State.

Fraudulent and willful violation of any of the requirements, or substitution of software into a voting system without notifying the State Board, is a Class I felony. Other violations are a civil penalty.

Section 3 -- State Board of Elections' Role in Purchasing. Effective with any upgrade or new voting system purchased beginning 7-1-05, the State Board of Elections is directed to develop a Request for Proposal. The vendor would have to agree to:

- Post a bond or letter of credit to cover damages from defects in its voting system, including the cost of a new election.
- State a statewide price for each unit of the equipment.

The State Board would be given the duties of monitoring voting system contracts, and of providing training and support to counties in their use. The goal would be that, within each type of voting system, all vendors would provide the same equipment.

New voting systems would have to allow reporting of absentee and early voting returns by precinct. The requirement that all counties must report such returns by precinct would be moved from 2006 to 2008.

Section 4 -- County Commissioners' Role in Purchasing. Effective 7-1-05, county commissioners would continue to purchase voting equipment. But because of the State Board's new duties, counties would be exempt from the purchasing rules that normally apply to local governments.

Section 5 -- County Board of Elections' Role in Purchasing. Effective 7-1-05, the county board of elections would have the duty to recommend to the county commissioners which type of voting system the county should purchase. Currently, the county chooses from a list of types, makes, and models approved by the State Board.

Section 6 -- Sample Counts. Effective 1-1-06, State Board of Elections rules must require a hand-to-eye count of paper ballots in a sampling of precincts, early voting sites, or sets of mail absentee ballots in every county. The hand-to-eye sample counts would be of a sampling of statewide races, always including the presidential race when it is on the ballot. Unless there is clear evidence to believe otherwise, the hand-to-eye count will prevail. If the difference between the hand-to-eye and the electronic or machine county is significant, a complete hand-to-eye count will be conducted.

Section 7 -- Expansion of Right to Hand-to-Eye Recount. Effective 1-1-06, any candidate entitled to a recount under current law – that is, a candidate who was less than 1% behind in the initial count (or the lesser of 0.5% or 10,000 votes behind in a statewide race) – is entitled to a sample hand-to-eye recount. That sample would be of all the ballots in 3% of the precincts, randomly selected, in each county. If an extrapolation of the sample count to the whole count forecasts a reversal of the result, the candidate is entitled to a full hand-to-eye recount. This expanded right would not cost the candidate.

Section 8 -- Appropriations to Reimburse Counties. Effective 7-1-05, the General Assembly would appropriate a sufficient amount of money (minus Help America Vote Act funds) to reimburse the counties for the lesser of the following:

- Upgrading an existing DRE system to comply with the act.
- Purchasing a new DRE system to comply with the act.
- Acquiring a new optical scan system to comply with the act.

Section 9 -- Appropriations to State Board for New Duties. Effective 7-1-05, the General Assembly would appropriate funds to the State Board of Elections to conduct its new duties under the bill.

Sec. 10 -- Code of Ethics. The State Board of Elections would be directed to recommend a code of ethics for members and employees of boards of elections at the county and State level. The code would address appropriate relations with voting system vendors. It would address how to avoid the reality and appearance of conflicts of interest and impropriety. The State Board would report to this Committee within 60 days after the bill became law.

Proposal Two – Public Employee Pollworkers. "Community service leave" already exists for State employees for a variety of school-based and community service activities. It includes service as election officials. It allows paid leave without employees' using up vacation leave. Proposal Two says any public employee in NC would be guaranteed 24 hours per year "community service leave" to serve as a precinct official or temporary employee of a county board of elections in a voting site, including an early voting site. If an employee has already taken pre-existing community service leave (as in State employment) for election service, that employee cannot use this act to add onto it. Effective when bill becomes law.

Proposal Three – Early Prep for Absentee Count. Currently, county boards can count mail absentee ballots no earlier than 2 p.m. on election day. This has forced some election board to stay up all night on election night to get them all counted. Proposal Three would allow boards to begin the process of counting mail absentee votes before election day: If they use optical scan voting system to count mail absentees, they may begin the process during each pre-election meeting they hold to approve absentee applications. At those meetings, they would be able to take the ballots out of their envelopes and feed them into the scanner, without printing the scanner's totals readout. The State Board of Elections would provide instructions so

this would be done accurately and without compromising the secrecy of the results before election day. Effective when bill becomes law.

Proposal Four – Any Precinct Voting Pilot. Proposal Four would require the State Board of Elections to select up to 10 counties in which to conduct a pilot program during 2005 and 2006 of continuing one-stop (early) voting through election day as the principal method of voting. That would mean any voter in the county could vote at any one of the sites, and the number of traditional precinct polling places open on election day would either be reduced or eliminated. Where technically feasible, however, returns would be reported by precinct. The State Board would report its findings and recommendations to 2006 and 2007 sessions of the General Assembly.

Proposal Five – Recasting Lost Votes. In 2004 the early votes of 4,438 people in Carteret County were lost beyond retrieval because a voting system was put on the wrong setting and would not record more than a certain number. The 4,438 votes were greater than the apparent margin of victory in the statewide race for Commissioner of Agriculture. The State Board of Elections was asked to allow the 4,438 to recast (or complete) the votes they cast that were lost. A majority of the State Board decided that doing so would constitute ordering a "new election," and would violate the provision in the new election statute that says all new elections must be in the entire jurisdiction in which the original election was held. Proposal Five would permit the State Board of Elections to allow a county board to permit a known group of voters whose votes were lost beyond retrieval to recast those votes. The bill would specify that the procedure would not be a "new election." Effective when bill becomes law.

PROPOSAL 1 – Public Confidence in Elections

A BILL TO BE ENTITLED

AN ACT TO RESTORE PUBLIC CONFIDENCE IN THE ELECTION PROCESS BY REQUIRING THAT ALL VOTING SYSTEMS PERMIT ALL VOTERS TO VERIFY THEIR VOTES ON PAPER; BY PROVIDING STATUTORY GUIDANCE AS TO COUNTING; BY PROVIDING CHECKS ON ELECTRONIC VOTING SYSTEM VENDORS INCLUDING MULTI-PARTY REVIEW OF SOURCE CODE, BY AUTHORIZING THE STATE BOARD OF ELECTIONS TO PROMOTE UNIFORMITY IN VOTING SYSTEMS BY STANDARDIZING PURCHASING OF VOTING SYSTEMS IN NORTH CAROLINA, BY EMPOWERING THE STATE BOARD OF ELECTIONS TO CONTROL THE TESTING AND SUPPORT OF VOTING SYSTEMS; BY REQUIRING POST-ELECTION TESTING OF VOTING SYSTEMS INCLUDING A PAPER SAMPLE-COUNT; BY EXPANDING THE RIGHT TO A HAND-TO-EYE RECOUNT OF PAPER BALLOTS; BY APPROPRIATING STATE FUNDS FOR VOTING SYSTEM ACQUISITION TO PREVENT IMPOSING UNFUNDED MANDATES UPON COUNTIES; AND BY APPROPRIATING FUNDS TO THE STATE BOARD OF ELECTIONS TO IMPLEMENT ITS EXPANDED DUTIES WITH REGARD TO VOTING SYSTEMS.

The General Assembly of North Carolina enacts:

SECTION 1. Effective January 1, 2006, Article 14A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"§ 163-165.9B. Voting systems: permitted voting systems; paper ballot required; counting.

(a) Permitted Voting Systems – The State allows three voting systems: (i) paper ballots; (ii) optical scan; and (iii) direct record electronic (DRE). Paper ballots are inherent to paper ballots and optical scan voting systems. In order to provide a paper ballot in a DRE, each DRE shall generate a paper ballot which can be verified by the voter before the vote is cast.

(b) Counting on Voting Systems. – In counties that use optical scan or DRE voting systems, subject to the sample counts under G.S. 163-182.1 and 163-182.2, and of a hand-to-eye recount under G.S. 163-182.7 and 163-182.7A, a board of elections shall rely in its canvass on the mechanical or electronic count of the vote rather than the full hand-to-eye recount of the paper ballots. In the event of a discrepancy between the electronic or mechanical count and a hand-to-eye count, the hand-to-eye count shall control, except where it is reasonable to conclude that the hand-to-eye count for whatever reason is not the true count."

SECTION 2.(a) Part 2 of Article 14A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"§ 163-165.9A. Voting systems: requirements for voting systems vendors; penalties.

(a) Duties of Vendor. – Every vendor that has a contract to provide a voting system in North Carolina shall do all of the following:

- (1) The vendor shall place in escrow with an independent escrow agent approved by the State Board of Elections a copy of all source code relevant to the recording or counting of votes, and related documentation, together with updates as they become known or available. The documentation shall include a system configuration and a sworn affidavit that the source code includes all relevant program statements in low-level and high-level languages. As used in this section, 'source code' does not include variable codes created for specific elections.
- (2) The vendor shall notify the State Board of Elections of any change in source code or any change in the foundation operating system.
- (3) The vendor shall make accessible for review all source code relevant to the recording or counting of votes by the State Board of Elections; the Office of Information Technology Services; the state chairs, or one designee of each chair, of each political party recognized under G.S. 163-96; and the purchasing county board of elections.
- (4) The chief executive officer of the vendor shall sign a sworn affidavit that the source code in escrow is the same being used in its voting systems in this State. The chief executive officer shall ensure that the statement is true on a continuing basis.
- (5) The vendor shall notify the State Board of Elections and the county board of elections of any county using its voting system of any defect in the same system known to have occurred anywhere.
- (6) The vendor shall maintain an office in North Carolina with staff to service the contract.

(b) Penalties. – Willful and fraudulent violation of any of the duties in subsection (a) of this section is a Class I felony. Substitution of source code into an operating voting system without notification as provided by subdivision (a)(2) of this section is a Class I felony. In addition to any other applicable penalties, violations of this section are subject to a civil penalty of up to {Insert dollar amount} dollars (\$) per violation. "

SECTION 2.(b) This section applies with respect to any county that upgrades a voting system or acquires a new voting system on or after July 1, 2005.

SECTION 3.(a) Effective July 1, 2005, and applicable with respect to all voting systems upgraded or acquired on or after that date, G.S. 163-165.7 reads as rewritten:

"§ 163-165.7. Voting systems: powers and duties of State Board of Elections.

(a) Certification of voting systems. The State Board of Elections shall have authority to approve types, makes, and models of voting systems for use in elections and referenda held in this State. Only voting systems that have been approved-certified by the State Board of Elections shall be used to conduct elections under this Chapter, and the

approved certified voting systems shall be valid in any election or referendum held in any county or municipality. The State Board may, upon request of a local board of elections, authorize the use of a voting system not approved for general use. The use of paper ballots counted by hand is a certified voting system. The State Board shall certify additional voting systems through the use of a request for proposal process. In consultation with the Office of Information Technology Services, the State Board of Elections shall develop the requests for proposal subject to the provisions of this Chapter and other applicable State laws. The request for proposal shall require at least all of the following:

- (1) That the vendor must post a bond or letter of credit to cover damages resulting from defects in the voting. Damages include the cost of a new election.
- (2) That the voting system comply with all federal requirements for voting systems.
- (3) That the voting system have the capacity to include in precinct returns the votes cast by voters outside of the voter's precinct.
- (4) For all voting systems utilizing electronic means, accessibility to review all source code relevant to the recording or counting of votes by the State Board of Elections; the Office of Information Technology Services; the state chairs, or one designee of each chair, of each political party recognized under G.S. 163-96; and the purchasing county board of elections.
- (5) That the vendor state a statewide uniform price for each unit of the equipment.

The State Board shall have as its goal in its request for proposals and its negotiations with vendors the eventual establishment of a uniformity of features within type throughout the State such that each optical scan voting system shall have substantially identical features to all other optical scan voting systems and each direct record electronic voting system shall have substantially identical features to all other direct record electronic systems. A uniformity of features within type does not necessarily mean there will be only one vendor per type.

(b) Decertification of voting systems. The State Board may also, upon notice and hearing, disapprove types, makes, and models of voting systems. Upon disapproving a type, make, or model of voting system, the State Board shall determine the process by which the disapproved system is discontinued in any county. ~~If a county makes a showing that discontinuance would impose a financial hardship upon it, the county shall be given up to four years from the time of State Board disapproval to replace the system. A county may appeal a decision by the State Board concerning discontinuance of a voting system to the superior court in that county or to the Superior Court of Wake County. The county has 30 days from the time of the State Board's decision on discontinuance to make that appeal.~~

(c) Monitoring Duties of the State Board. – The State Board of Elections shall review, or designate an independent expert to review, all source code escrowed by vendors pursuant to G.S. 163-165.9A, and shall publish or otherwise make available its findings in accordance with Chapter 132 of the General Statutes. The State Board shall facilitate the review of the escrowed source code by the other entities provided for in G.S. 163-165.9A(a)(3). All source code made available for review pursuant to the provisions of this Chapter shall be deemed a trade secret of the vendor, and any person responsible for the misuse or unauthorized release of the source code shall be subject to the provisions of G.S. 14-75.1 and Article 24 of Chapter 66 of the General Statutes. The State Board shall monitor vendor compliance with all contractual agreements and with all provisions of G.S. 163-165.9A.

(d) Rules. – Subject to the provisions of this Chapter, the State Board of Elections shall prescribe rules for the adoption, handling, operation, and honest use of certified voting systems, including, but not limited to, the following:

- (1) Procedures for county boards of elections to utilize when recommending the purchase of a Types, makes, and models of certified voting systems approved system for use in this State that county.
- (2) Form of official ballot labels to be used on voting systems.
- (3) Operation and manner of voting on voting systems. The rules shall comply with G.S. 163-165.9B.
- (4) Instruction of precinct officials in the use of voting systems.
- (5) Instruction of voters in the use of voting systems.
- (6) Assistance to voters using voting systems.
- (7) Duties of custodians of voting systems.
- (8) Examination and testing of voting systems before and after use in an election.

Any rules adopted under this section shall be in conjunction with procedures and standards adopted under G.S. 163-182.1, are exempt from Chapter 150B of the General Statutes, and are subject to the same procedures for notice and publication set forth in G.S. 163-182.1.

(e) Training and Support of Voting Systems. – The State Board of Elections, with the assistance of other State agencies, shall provide training and support of the certified voting systems, so that no county board of elections must rely on a vendor for primary support.

SECTION 3.(b) Section 11 of S.L. 2003-226, which would have made amendment to G.S. 163-165.7 effective January 1, 2006, is repealed.

SECTION 3.(c) In order to carry forward the first of two amendments that would have been made by Section 11 of S.L. 2003-226 to the old version of G.S. 163-165.7, effective January 1, 2006, G.S. 163-165.7 as rewritten by subsection (a) of this section is amended by adding the following new subsection:

"(a1) Federal Assistance. – The State Board may use guidelines, information, testing reports, certification, decertification, recertification, and any relevant data produced by

the Election Assistance Commission, its Standards Board, its Board of Advisors, or the Technical Guidelines Development Committee as established in Title II of the Help America Vote Act of 2002 with regard to any action or investigation the State Board may take concerning a voting system. The State Board may use, for the purposes of voting system certification, laboratories accredited by the Election Assistance Commission under the provisions of section 231(2) of the Help America Vote Act of 2002.

SECTION 3.(d) In order to carry forward the second of two amendments that would have been made by Section 11 of S.L. 2003-226 to the old version of G.S. 163-165.7, effective January 1, 2006, G.S. 163-165.7(d) as rewritten by subsection (a) of this section is amended by adding the following new subdivision:

"(9) Compliance with section 301 of the Help America Vote Act of 2002."

SECTION 3.(e) G.S. 163-132.5G reads as rewritten:

"§ 163-132.5G. Voting data maintained by precinct.

To the extent that it can do so without compromising the secrecy of an individual's ballot, each county board of elections shall maintain voting data by precinct so that precinct returns for each item on the ballot shall include the votes cast by residents of the precinct who voted by absentee ballot, both mail and one-stop. The county board shall not be required to report absentee voting data by precinct until 60 days after the election. The State Board of Elections shall adopt rules for the enforcement of this section with the goal that all voting data shall be reported by precinct by the ~~2006~~ 2008 election. Those rules shall provide for exemptions where the expense of compliance would place a financial hardship on a ~~county~~ county and shall provide an exemption if the current voting system cannot be programmed to provide such information, but any new voting system acquired after July 1, 2005 must have the ability to provide such information. Those rules shall provide for compliance by 2004 for counties the State Board determines are capable of complying by that year."

SECTION 4. Effective July 1, 2005, G.S. 163-165.8 reads as rewritten:

"§ 163-165.8. Voting systems: powers and duties of board of county commissioners.

The board of county commissioners, with the approval of the county board of elections, may adopt and purchase or lease for reimbursement by the State only a voting system of a type, make, and model ~~approved~~ certified by the State Board of Elections for use in some or all voting places in the county at some or all elections.

The board of county commissioners may decline to adopt and purchase or lease any voting system recommended by the county board of elections but may not adopt and purchase or lease any voting system that has not been approved by the county board of elections. Article 8 of Chapter 143 of the General Statutes does not apply to county boards of commissioners purchasing voting systems certified by the State Board of Elections."

SECTION 5. Effective July 1, 2005, G.S. 163-165.9 reads as rewritten:

"§ 163-165.9. Voting systems: powers and duties of county board of elections.

Before approving the adoption and purchase or lease of any voting system by the board of county commissioners, the county board of elections shall do all of the following:

- (1) ~~Obtain a current financial statement from the proposed vendor or lessor of the voting system and send copies of the statement to the county attorney and the chief county financial officer. Recommend to the board of county commissioners which type of voting system should be acquired by the county.~~
- (2) Witness a demonstration, in that county or at a site designated by the State Board of Elections, of the type of voting system to be recommended by the proposed vendor or lessor and also witness a demonstration of at least one other type of voting system approved certified by the State Board of Elections.
- (3) Test, during an election, the proposed voting system in at least one precinct in the county where the voting system would be used if adopted."

SECTION 6.(a) G.S. 163-182.1(b) reads as rewritten:

"(b) Procedures and Standards. – The State Board of Elections shall adopt uniform and nondiscriminatory procedures and standards for voting systems. The standards shall define what constitutes a vote and what will be counted as a vote for each category of voting system used in the State. The State Board shall adopt those procedures and standards at a meeting occurring not earlier than 15 days after the State Board gives notice of the meeting. The procedures and standards adopted shall apply to all elections occurring in the State and shall be subject to amendment or repeal by the State Board acting at any meeting where notice that the action has been proposed has been given at least 15 days before the meeting. These procedures and standards shall not be considered to be rules subject to Article 2A of Chapter 150B of the General Statutes. However, the State Board shall publish in the North Carolina Register the procedures and standards and any changes to them after adoption, with that publication noted as information helpful to the public under G.S. 150B-21.17(a)(6). Copies of those procedures and standards shall be made available to the public upon request or otherwise by the State Board. For optical scan and direct record electronic voting systems, and for any other voting systems in which ballots are counted other than on paper by hand and eye, those procedures and standards shall do both of the following:

- (1) Provide for a sample hand-to-eye count of the paper official ballots of a sampling of statewide ballot items in every county, always including the presidential ballot item. The sample chosen by the State Board shall be of full precincts, full counts of absentee ballots, and full counts of one-stop early voting sites. The size of the sample of each category shall be chosen to produce a statistically significant result and shall be chosen after consultation with a statistician. The actual units shall be chosen at random. In the event of a discrepancy between the electronic or

mechanical count and a hand-to-eye count, the hand-to-eye count shall control, except where it is reasonable to conclude that the hand-to-eye count for whatever reason is not the true count. If the discrepancy between the hand-to-eye count and the mechanical or electronic count is significant, a complete hand-to-eye count shall be conducted.

- (2) ~~provide~~ Provide that if the voter selects votes for more than the number of candidates to be elected or proposals to be approved in a ballot item, the voting system shall do all the following:
- (1)~~a.~~ Notify the voter that the voter has selected more than the correct number of candidates or proposals in the ballot item.
 - (2)~~b.~~ Notify the voter before the vote is accepted and counted of the effect of casting overvotes in the ballot item.
 - (3)~~c.~~ Provide the voter with the opportunity to correct the official ballot before it is accepted and counted."

SECTION 6.(b) G.S. 163-182.2 reads as rewritten:

"§ 163-182.2. Initial counting of official ballots.

(a) The initial counting of official ballots shall be conducted according to the following principles:

- (1) Vote counting at the precinct shall occur immediately after the polls close and shall be continuous until completed.
- (2) Vote counting at the precinct shall be conducted with the participation of precinct officials of all political parties then present. Vote counting at the county board of elections shall be conducted in the presence or under the supervision of board members of all political parties then present.
- (3) Any member of the public wishing to witness the vote count at any level shall be allowed to do so. No witness shall interfere with the orderly counting of the official ballots. Witnesses shall not participate in the official counting of official ballots.
- (4) Provisional official ballots shall be counted by the county board of elections before the canvass. If the county board finds that an individual voting a provisional official ballot is not eligible to vote in one or more ballot items on the official ballot, the board shall not count the official ballot in those ballot items, but shall count the official ballot in any ballot items for which the individual is eligible to vote.
- (5) Precinct officials shall provide a preliminary report of the vote counting to the county board of elections as quickly as possible. The preliminary report shall be unofficial and has no binding effect upon the official county canvass to follow.

(b) The State Board of Elections shall promulgate rules for the initial counting of official ballots. All election officials shall be governed by those rules. In promulgating those rules, the State Board shall adhere to the following guidelines:

- (1) For each voting system used, the rules shall specify the role of precinct officials and of the county board of elections in the initial counting of official ballots.
- (1a) For optical scan and direct record electronic voting systems, and for any other voting systems in which ballots are counted other than on paper by hand and eye, those rules shall provide for a sample hand-to-eye count of the paper official ballots of a sampling of statewide ballot items in every county, always including the presidential ballot item. The sample chosen by the State Board shall be of full precincts, full counts of absentee ballots, and full counts of one-stop early voting sites. The size of the sample of each category shall be chosen to produce a statistically significant result and shall be chosen after consultation with a statistician. The actual units shall be chosen at random. In the event of a discrepancy between the electronic or mechanical count and a hand-to-eye count, the hand-to-eye count shall control, except where it is reasonable to conclude that the hand-to-eye count for whatever reason is not the true count. If the discrepancy between the hand-to-eye count and the mechanical or electronic count is significant, a complete hand-to-eye count shall be conducted.
- (2) The rules shall provide for accurate unofficial reporting of the results from the precinct to the county board of elections with reasonable speed on the night of the election.
- (3) The rules shall provide for the prompt and secure transmission of official ballots from the voting place to the county board of elections.

The State Board shall direct the county boards of elections in the application of the principles and rules in individual circumstances."

SECTION 6.(c) G.S. 163-182.5 reads as rewritten:

"§ 163-182.5. Canvassing votes.

(a) The Canvass. – As used in this Article, the term "canvass" means the entire process of determining that the votes have been counted and tabulated correctly, culminating in the authentication of the official election results. The board of elections conducting a canvass has authority to send for papers and persons and to examine them and pass upon the legality of disputed ballots.

(b) Canvassing by County Board of Elections. – The county board of elections shall meet at 11:00 A.M. on the seventh day after every election to complete the canvass of votes cast and to authenticate the count in every ballot item in the county by determining that the votes have been counted and tabulated correctly. If, despite due diligence by election officials, the initial counting of all the votes has not been completed by that time, the county board may hold the canvass meeting a reasonable time thereafter. The canvass meeting shall be at the county board of elections office, unless the county board, by unanimous vote of all its members, designates another site within the county. The county board shall examine the returns from precincts, from absentee official ballots,

from the sample hand-to-eye paper ballot counts, and from provisional official ballots and shall conduct the canvass.

(c) Canvassing by State Board of Elections. – After each general election, the State Board of Elections shall meet at 11:00 A.M. on the Tuesday three weeks after election day to complete the canvass of votes cast in all ballot items within the jurisdiction of the State Board of Elections and to authenticate the count in every ballot item in the county by determining that the votes have been counted and tabulated correctly. After each primary, the State Board shall fix the date of its canvass meeting. If, by the time of its scheduled canvass meeting, the State Board has not received the county canvasses, the State Board may adjourn for not more than 10 days to secure the missing abstracts. In obtaining them, the State Board is authorized to secure the originals or copies from the appropriate clerks of superior court or county boards of elections, at the expense of the counties."

SECTION 6.(d) This section becomes effective January 1, 2006.

SECTION 7.(a) G.S. 163-182.7 reads as rewritten:

"§ 163-182.7. Ordering recounts.

(a) Discretionary Recounts. – The county board of elections or the State Board of Elections may order a recount when necessary to complete the canvass in an election. The county board may not order a recount where the State Board of Elections has already denied a recount to the petitioner.

(b) Mandatory Recounts for Ballot Items Within the Jurisdiction of the County Board of Elections. – In a ballot item within the jurisdiction of the county board of elections, a candidate shall have the right to demand a recount of the votes if the difference between the votes for that candidate and the votes for a prevailing candidate is not more than one percent (1%) of the total votes cast in the ballot item, or in the case of a multiseat ballot item not more than one percent (1%) of the votes cast for those two candidates. The demand for a recount must be made in writing and must be received by the county board of elections by 5:00 P.M. on the first day after the canvass. The recount shall be conducted under the supervision of the county board of elections.

(c) Mandatory Recounts for Ballot Items Within the Jurisdiction of the State Board of Elections. – In a ballot item within the jurisdiction of the State Board of Elections, a candidate shall have the right to demand a recount of the votes if the difference between the votes for that candidate and the votes for a prevailing candidate are not more than the following:

- (1) For a nonstatewide ballot item, one percent (1%) of the total votes cast in the ballot item, or in the case of a multiseat ballot item, one percent (1%) of the votes cast for those two candidates.
- (2) For a statewide ballot item, one-half of one percent (0.5%) of the votes cast in the ballot item, ~~or in the case of a multiseat ballot item, one half of one percent (0.5%) of the votes cast for those two candidates,~~ or 10,000 votes, whichever is less.

The demand for a recount must be in writing and must be received by the State Board of Elections by noon on the second Thursday after the election. If on that Thursday the available returns show a candidate not entitled to a mandatory recount, but the Executive Director determines subsequently that the margin is within the threshold set out in this subsection, the Executive Director shall notify the eligible candidate immediately and that candidate shall be entitled to a recount if that candidate so demands within 48 hours of notice. The recount shall be conducted under the supervision of the State Board of Elections.

(d) Rules for Conducting Recounts. – The State Board of Elections shall promulgate rules for conducting recounts. Those rules shall be subject to the following guidelines:

(1) The rules shall specify, with respect to each type of voting system, when and to what extent the recount shall consist of machine recounts and hand-to-eye recounts. Hand-to-eye recounts shall also be ordered as provided by G.S. 163-182.7A.

(2) The rules shall provide guidance in interpretation of the voter's choice.

(3) The rules shall specify how the goals of multipartisan participation, opportunity for public observation, and good order shall be balanced."

SECTION 7.(b) Article 15A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"§ 163-182.7A. Additional provisions for hand-to-eye recounts.

(a) The rules promulgated by the State Board of Elections for recounts shall provide that if the initial recount is not hand-to-eye, and if the recount does not reverse the results, the candidate who had originally been entitled to a recount may, within 24 hours of the completion of the first recount, demand a second recount on a hand-to-eye basis in a sample of precincts. If the initial recount was not hand-to-eye and it reversed the results, the candidate who had initially been the winner shall have the same right to ask for a hand-to-eye recount in a sample of precincts.

That sample shall be all the ballots in three percent (3%) of the precincts casting ballots in each county in the jurisdiction of the office, rounded up to the next whole number of precincts. For the purpose of that calculation, each one-stop (early) voting site and the mail-in absentee ballots shall be considered to be a precinct. The precincts to be recounted by a hand-to-eye count shall be chosen at random within each county. If the results of the hand-to-eye recount differ from the previous results within those precincts to the extent that extrapolating the amount of the change to the entire jurisdiction (based on the proportion of ballots recounted to the total votes cast for that office) would result in the reversing of the results, then the State Board of Elections shall order a hand-to-eye recount of the entire jurisdiction in which the election is held. There shall be no cost to the candidate for that recount in the entire jurisdiction.

(b) Recounts under this section shall be governed by rules adopted under G.S. 163-182.7(d).

(c) No complete hand-to-eye recount shall be conducted under this section if one has already been done under another provision of law."

SECTION 7.(c) This section becomes effective January 1, 2006.

SECTION 8. To meet the goals of uniformity and equity, and to avoid placing unfunded mandates upon the counties, there is appropriated from the General Fund to the State Board of Elections the sum of _____ for the 2005-2006 fiscal year and the sum of _____ for the 2006-2007 fiscal year (minus Help America Vote Act funds available for the same purpose) for the purpose of reimbursing counties for the lesser of the following expenses:

- (1) Upgrading an existing direct record electronic system used in that county to comply with this act (if it is possible to upgrade)
- (2) Acquiring a direct record electronic system (DRE) that complies with this act
- (3) Acquiring an optical-scan system that complies with this act.

SECTION 9. There is appropriated from the General Fund to the State Board of Elections the sum of _____ for the 2005-2006 fiscal year and the sum of _____ for the 2006-2007 fiscal year for the purpose of meeting its expanded duties under this act with regard to voting systems.

SECTION 9.1. There will be appropriated from the General Fund to the State Board of Elections an appropriate sum in the 2005-2006 fiscal year and the 2006-2007 fiscal year for the purpose of reimbursing counties for costs incurred for conducting post-election verification or any other hand-eye counting or recounting of votes.

SECTION 10. The State Board of Elections shall recommend a model code of ethics for members and employees of county boards of elections and of the State Board of Elections. The code shall address the appropriate relations between those members and staff and vendors who do business or seek to do business with boards of elections in North Carolina. It shall address how to avoid both the reality and the appearance of conflicts of interest and impropriety. The State Board shall report its recommended code to the Joint Select Committee on Electronic Voting Systems no later than 60 days after this act becomes law.

SECTION 11. Sections 8 and 9 of this act become effective July 1, 2005. Except as otherwise provided herein, the remainder of this act is effective when it becomes law.

Proposal 2 – Public Employee Pollworkers

A BILL TO BE ENTITLED
AN ACT TO ALLOW LEAVE TO PUBLIC EMPLOYEES FOR WORKING AS
PRECINCT OFFICIALS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 5 of Chapter 163 of the General Statutes is amended by adding a new section to read:

"163-41.3. Leave for public employees to work as election officials.

Every employee of the State of North Carolina or of a city, county, school administrative unit, constituent institution of the University of North Carolina, or other political subdivision or public corporation in the State is entitled to up to 24 hours per year of community service leave to serve as a precinct official or as a temporary employee of a county board of elections in a voting site, including a one-stop site as provided in G.S. 163-227.2. As used in this section, 'community service leave' for an employee means absence with full pay in addition to any vacation leave or sick leave to which the employee is already entitled. This section does not entitle an employee to additional community service leave in addition to leave that employee received for the equivalent election service under an equivalent program of the employer."

SECTION 2. This act is effective when it becomes law.

Proposal 3 – Early Prep Absentee

A BILL TO BE ENTITLED
AN ACT TO AUTHORIZE COUNTY BOARDS OF ELECTIONS TO TAKE STEPS
EARLIER TO COUNT MAILED ABSENTEE VOTES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 163-234 reads as rewritten:

"§ 163-234. Counting absentee ballots by county board of elections.

All absentee ballots returned to the county board of elections in the container-return envelopes shall be retained by the board to be counted by the county board of elections as herein provided.

- (1) Only those absentee ballots returned to the county board of elections no later than 5:00 p.m. on the day before election day in a properly executed container-return envelope shall be counted, except to the extent federal law requires otherwise.
- (2) The county board of elections shall meet at 5:00 p.m. on election day in the board office or other public location in the county courthouse for the purpose of counting all absentee ballots except those which have been challenged before 5:00 p.m. on election day. Any elector of the county shall be permitted to attend the meeting and allowed to observe the counting process, provided the elector shall not in any manner interfere with the election officials in the discharge of their duties.

Provided, that the county board of elections is authorized to begin counting absentee ballots between the hours of 2:00 p.m. and 5:00 p.m. upon the adoption of a resolution at least two weeks prior to the election wherein the hour and place of counting absentee ballots shall be stated. A copy of the resolutions shall be published once a week for two weeks prior to the election, in a newspaper having general circulation in the county. Notice may additionally be made on a radio or television station or both, but such notice shall be in addition to the newspaper and other required notice. The count shall be continuous until completed and the members shall not separate or leave the counting place except for unavoidable necessity, except that if the count has been completed prior to the time the polls close, it shall be suspended until that time pending receipt of any additional ballots, and except that one-stop ballots under G.S. 163-227.2 counted electronically shall not be counted until the polls close; provided, however, that if there are outstack ballots in the counting device, they may be counted at the same time as other ballots are counted under this subdivision. The county board of elections may begin putting them in the tabulator at the same time as other ballots are counted under this subdivision if the system for counting one-stop

ballots requires them to be put in a tabulator but the process has the voter place them in a ballot box. The board shall not announce the result of the count before 7:30 p.m.

- (2a) Notwithstanding the provisions of subdivision (2) of this section, a county board of elections may, at each meeting at which it approves absentee ballot applications pursuant to G.S. 163-230.1(c) and (c1), remove those ballots from their envelopes and have them read by an optical scanning machine, without printing the totals on the scanner. The board shall complete the counting of these ballots at the times provided in subdivision (2) of this section. The State Board of Elections shall provide instructions to county boards of elections for executing this procedure, and the instructions shall be designed to ensure the accuracy of the count, the participation of board members of both parties, and the secrecy of the results before election day. This subdivision applies only in counties that use optical scan devices to county absentee ballots.
- (3) The counting of absentee ballots shall not commence until a majority and at least one board member of each political party represented on the board is present and that fact is publicly declared and entered in the official minutes of the county board.
- (4) The county board of elections may employ such assistants as deemed necessary to count the absentee ballots, but each board member present shall be responsible for and observe and supervise the opening and tallying of the ballots.
- (5) As each ballot envelope is opened, the board shall cause to be entered into a pollbook designated "Pollbook of Absentee Voters" the name of the absentee voter, or if the pollbook is computer-generated, the board shall check off the name. Preserving secrecy, the ballots shall be placed in the appropriate ballot boxes, at least one of which shall be provided for each type of ballot. The "Pollbook of Absentee Voters" shall also contain the names of all persons who voted under G.S. 163-227.2, but those names may be printed by computer for inclusion in the pollbook.

After all ballots have been placed in the boxes, the counting process shall begin.

If one-stop ballots under G.S. 163-227.2 are counted electronically, that count shall commence at the time the polls close. If one-stop ballots are paper ballots counted manually, that count shall commence at the same time as other absentee ballots are counted.

If a challenge transmitted to the board on canvass day by a chief judge is sustained, the ballots challenged and sustained shall be withdrawn from the appropriate boxes, as provided in G.S. 163-89(e).

As soon as the absentee ballots have been counted and the names of the absentee voters entered in the pollbook as required herein, the board

members and assistants employed to count the absentee ballots shall each sign the pollbook immediately beneath the last absentee voter's name entered therein. The county board of elections shall be responsible for the safekeeping of the pollbook of absentee voters.

- (6) Upon completion of the counting process the board members shall cause the results of the tally to be entered on the absentee abstract prescribed by the State Board of Elections. The abstract shall be signed by the members of the board in attendance and the original mailed immediately to the State Board of Elections. The county board of elections may have a separate count on the abstract for one-stop absentee ballots under G.S. 163-227.2.
- (7) One copy of the absentee abstract shall be retained by the county board of elections and the totals appearing thereon shall be added to the final totals of all votes cast in the county for each office as determined on the official canvass.
- (8) In the event a political party does not have a member of the county board of elections present at the meeting to count absentee ballots due to illness or other cause of the member, the counting shall not commence until the county party chairman of said absent member, or a member of the party's county executive committee, is in attendance. Such person shall act as an official witness to the counting and shall sign the absentee ballot abstract as an "observer."
- (9) The county board of elections shall retain all container-return envelopes and absentee ballots, in a safe place, for at least four months, and longer if any contest is pending concerning the validity of any ballot."

SECTION 2. This act is effective when it becomes law.

Proposal 4 – Any Precinct Voting Pilot

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE STATE BOARD OF ELECTIONS TO CONDUCT A PILOT PROGRAM IN WHICH THE METHODS USED IN ONE-STOP VOTING WOULD CONTINUE THROUGH ELECTION DAY AS THE PREDOMINANT VOTING METHOD.

The General Assembly of North Carolina enacts:

SECTION 1. The State Board of Elections shall select up to 10 counties in which to conduct a pilot program during the 2005 and 2006 elections. In selecting those counties, the State Board shall seek diversity of population size, regional location, and demographic composition. The pilot shall be conducted in a county only with the concurrence of the county board of elections. The pilot program shall consist of continuing one-stop voting as provided in G.S. 163-227.2 through election day as the principal method of voting. In the counties participating in the pilot, the State Board shall adopt a plan in which the following shall occur:

- (1) Any voter properly registered in the county may vote at any one-stop site during the one-stop period established in G.S. 163-227.2 and on election day.
- (2) All one-stop sites used in the pilot counties shall have online connection to the voter registration system so that voters can be checked.
- (3) The number of precinct voting places open on election day shall be reduced or eliminated.
- (4) The larger number of one-stop sites may be open on election day than during the earlier part of the one-stop period.
- (5) Where technically feasible, the election returns shall be reported by precinct, using all the precincts in existence in the county, whether or not the precinct polling place is open.
- (6) The State Board shall determine which ballots must be made retrievable and identifiable to the voter in order to ensure that the vote-count by eligible voters is accurate. If any vote need not be identifiable to the voter, it shall not be made so, notwithstanding G.S. 163-227.2(e1).
- (7) Notwithstanding G.S. 163-227.2(g), the State Board may allow the county board in a pilot county to designate one-stop sites in commercial buildings that are not public buildings.
- (8) In designing the pilot program, the State Board shall ensure fairness to all voters, candidates, and parties, including candidates and voters in counties outside the pilot counties.

SECTION 2. This act is effective when it becomes law. The State Board of Elections shall closely monitor the pilot program and report its findings and

recommendations to the General Assembly at its 2006 regular session and to the 2007 General Assembly.

Proposal 5 – Recasting Lost Votes

A BILL TO BE ENTITLED
AN ACT TO AUTHORIZE BOARDS OF ELECTIONS TO ALLOW KNOWN
VOTERS WHOSE VOTES WERE LOST TO RECAST THEIR BALLOTS
DURING A TWO-WEEK PERIOD AFTER THE ELECTION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 163-182.12 reads as rewritten:

"§ 163-182.12. Authority of State Board of Elections over protests.

The State Board of Elections may consider protests that were not filed in compliance with G.S. 163-182.9, may initiate and consider complaints on its own motion, may intervene and take jurisdiction over protests pending before a county board, and may take any other action necessary to assure that an election is determined without taint of fraud or ~~corruption~~ corruption and without irregularities that may have changed the result of an election. Where a known group of voters cast votes that were lost beyond retrieval, the State Board of Elections may authorize a county board of elections to allow those voters to recast their ballots during a period of two weeks after the election. If the State Board approves a recasting of votes under this section, any procedures the county board uses to contact those voters and allow them to recast their votes shall be subject to approval by the State Board. Those recast votes shall be added to the returns and included in the canvass. The recasting of those votes shall not be deemed a new election for purposes of G.S. 163-182.13."

SECTION 2. This act is effective when it becomes law.



North Carolina General Assembly

Marc Basnight
President Pro Tem

James B. Black
Speaker

Richard T. Morgan
Speaker

JOINT SELECT COMMITTEE ON ELECTRONIC VOTING SYSTEMS

Section 1. The Joint Select Committee on Electronic Voting Systems (hereinafter "Committee") is established by the President Pro Tempore of the Senate and the Speakers of the House of Representatives pursuant to G.S. 120-19.6, Rule 31 of the Rules of the Senate of the 2003 General Assembly, and Rule 26(a) of the Rules of the House of Representatives of the 2003 General Assembly. This committee is formed to study the issues in S.L. 2004-161, Part XII (Voter Paper Trail Study). Therefore, the Electronic Voting Systems Study Commission in S.L. 2004-161, Part XII will not be appointed.

Section 2. The Committee consists of 13 members as follows:

- Sen. Eleanor Kinnaid, Cochair, appointed by the President Pro Tempore of the Senate
- Sen. Austin Allran, Cochair, appointed by the President Pro Tempore of the Senate
- Ms. Susan Adams, Cochair, appointed by the Speakers of the House of Representatives
- Rep. Verla Insko, Cochair, appointed by the Speakers of the House of Representatives

- Mr. Michael Ashe, appointed by the President Pro Tempore of the Senate
- Mr. Barry Jacobs, appointed by the President Pro Tempore of the Senate
- Mr. Warren Murphy, appointed by the President Pro Tempore of the Senate
- Mr. David Allen, appointed by the President Pro Tempore of the Senate
- Mr. Bob Cordle, appointed by the Speakers of the House of Representatives
- Rep. Jean Preston, appointed by the Speakers of the House of Representatives
- Mr. John Esparza, appointed by the Speakers of the House of Representatives
- Mr. Roger Knight, appointed by the Speakers of the House of Representatives

The Executive Director of the State Board of Elections, appointed by the President Pro Tempore of the Senate and the Speakers of the House of Representatives

Members serve at the pleasure of their appointing authority.

Section 3. The Committee shall study the issue of whether direct record electronic (DRE) voting systems should be prohibited in North Carolina unless each unit of the system produces a voter-verifiable paper record that is suitable for a recount or a manual audit and that is equivalent or superior to the paper record produced by a paper ballot system. In conducting the study, the Committee shall consider DRE voting systems, compliance with the Help America Vote Act of 2002 (HAVA) and with voting-systems standards to be adopted under HAVA, including providing sufficient opportunity for access and participation, and privacy and independence, to all voters regardless of disability. The Committee shall consider any other issue related to the use of electronic voting systems.

Section 4. The Committee may report on the results of its study, including any proposed legislation, to the members of the Senate and the House of Representatives, on or before the convening of the 2005 Regular Session of the 2005 General Assembly by filing a copy of the report with the President Pro Tempore's office, the Speakers' offices, and the Legislative Library. The Committee shall report on the results of its study, including any proposed legislation, to the members of the Senate and the House of Representatives, on or before the convening of the 2006 Regular Session of the 2005 General Assembly by filing a copy of the report with the President Pro Tempore's office, the Speakers' offices, and the Legislative Library. The Committee terminates upon the convening of the 2006 Regular Session of the 2005 General Assembly, or upon the filing of its final report, whichever occurs first.

Section 5. The Committee shall meet during the interim period between regular sessions upon the call of the House and Senate co-chairs.

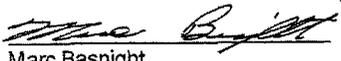
Section 6. The Committee is vested with the authority contained in Article 5A of Chapter 120 of the General Statutes.

Section 7. Members of the Committee shall receive per diem, subsistence, and travel allowance at the rate established in G.S. 120-3.1, 138-5, or 138-6, as appropriate.

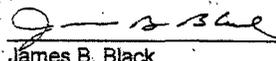
Section 8. The expenses of the Committee shall be considered expenses incurred for the joint operation of the General Assembly. Individual expenses of \$5,000 or less, including per diem, travel, and subsistence expenses of members of the Committee, and clerical expenses shall be paid upon the authorization of a co-chair of the Committee. Individual expenses in excess of \$5,000 shall be paid

upon the written approval of the President Pro Tempore of the Senate and the Speakers of the House of Representatives. All expenses of the Committee shall be paid from the Legislative Services Commission's Reserve for Studies.

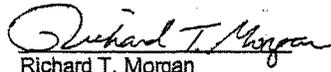
Effective this 19th day of November, 2004.



Marc Basnight
President Pro Tempore



James B. Black
Speaker



Richard T. Morgan
Speaker

